

Ms. Nancy Marconi
Registrar
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

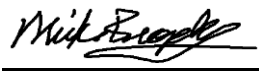
October 4, 2022

**Re: EB-2022-0140 – Hydro One Networks Inc. Leave to Construct Application – Chatham by Lakeshore
Pollution Probe Submission**

Dear Ms. Marconi,

In accordance with Procedural Order No. 4, please find attached Pollution Probe's submission related to the above-noted proceeding.

Respectfully submitted on behalf of Pollution Probe.



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All Parties (via email)
Richard Carlson, Pollution Probe (via email)

ONTARIO ENERGY BOARD

**Hydro One Networks Inc.
Leave to Construct Application
Chatham by Lakeshore Project**

POLLUTION PROBE SUBMISSION

October 4, 2022

**Submitted by: Michael Brophy
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Consultant for Pollution Probe

Background

Hydro One Networks Inc. (Hydro One) applied to the Ontario Energy Board (OEB) on May 9, 2022 under sections 92 and 97 of the Ontario Energy Board Act, for an order or orders granting leave to construct approximately 49 kilometres (km) of 230 kilovolt double-circuit transmission line between Chatham Switching Station and Lakeshore Transformer Station and associated station facilities to connect the proposed new transmission line at the terminal stations (Project). Hydro One has also applied to the OEB for approval of the form of land-use agreements it offers to landowners for the routing and construction of the Project.

By Order in Council dated March 31, 2022, the Lieutenant Governor in Council declared that the Project is a priority transmission project (Priority Project) under section 96.1 of the OEB Act. Accordingly, pursuant to section 96.1 of the OEB Act, the OEB is required to accept that the construction of the Project is needed. In addition, it is a condition of Hydro One's electricity transmission licence to develop and seek approvals for a new Chatham to Lakeshore transmission line, and that development of the line accord with the project scope and timing recommended by the IESO¹.

The OEB noted in Procedural Order No. 1 that, the standard issues relating to need and the consideration of alternatives to the construction of a transmission line are not applicable in this proceeding and appended a copy of the updated Issues List for this proceeding to Procedural Order No.1. More specifically, the issues related to project need were removed, but all other relevant issues remain in scope for this proceeding.

The OEB that a written hearing is sufficient for this proceeding. The OEB rejected a request via Motion by the Ross Firm Group (RFG) for an oral proceeding related to various landowner and environmental matters. To enable a more fulsome public record related to issues in this proceeding, the OEB also provided an opportunity for supplemental interrogatories related to:

- a) the price impacts of Hydro One's Environmental Assessment costs and costs related to Indigenous consultation activities,
- b) price and reliability impacts related to route selection, and/or
- c) price or reliability impacts related to the choice of tower or conductor technologies

¹ These conditions were added to Hydro One's licence by Decision and Order dated December 23, 2020 (EB-2020-0309) further to a Ministerial Directive received by the OEB on December 17, 2020

Summary and Context

Supply of clean energy, including low carbon electricity is important to meet the future needs of Ontario. Pollution Probe recognizes the limited scope for this Leave to Construct proceeding, specifically issues pertaining to the need for the Project. Although the need for the Project is not in question during this proceeding, all other Leave to Construct requirements continue to apply and must be considered. This includes assessment of options, proposed design, reliability impacts, routes, costs, landowner agreement and related elements including proposed environmental and socio-economic mitigation that has a direct and indirect impact on the scope of the OEB proceeding. The Issue List defined for this proceeding provides an opportunity to assess all of these relevant elements.

Pollution Probe inquired on why Hydro One did not simply request an exemption from a Leave to Construct from the OEB. If this “Priority Project” did not require a fulsome review by the OEB, then an exemption may have streamlined the process. The answer to this question was eventually provided by Hydro One in the responses to supplementary interrogatories, which indicated that “The Order in Council does not include such language nor does Hydro One interpret the Order in Council to be a special circumstance that would exempt it from the requirement of obtaining leave of the OEB”². Clearly, outside of the need for the project, this OEB Leave to Construct proceeding is meant to thoroughly review the proposed Project and ensure that all relevant issues are assessed and that the OEB decision serves as a mechanism to ensure that the public interest is served (e.g. assessment of relevant costs, design, landowner impacts/treatment, appropriate conditions of approval, etc.).

Hydro One’s interpretation of the Order in Council confirmed that a fulsome review of this project was still expected to determine the prudence of decisions by Hydro One. In other words, the designation of this Project as a “Priority Project” does not provide Hydro One a “free pass” from assessment of the project by the OEB and should not be interpreted in that manner by any parties.

The discovery process in this proceeding has provided important Project information that was not included in the original application. Even during the additional stage of supplemental interrogatories added by the OEB, relevant information continued to be discovered that should have been included in the original application. Pollution Probe suggests that much of this information is core to consideration of the application and scope of review. It would have been more appropriate, efficient and transparent for Hydro One to have included this in its initial application. It is possible that Hydro One may have believed that less information was required in its application given that need

² EB-2022-0140 Exhibit I, Tab 6, Schedule 11

for the project was already established through the Order in Council. Regardless, the process defined by the OEB was sufficient to close many of those gaps during the proceeding.

In general, Pollution Probe supports the proposed project's potential to provide electricity in an increasingly electrified Ontario, as outlined in the application. However, there are specific issues identified below related to the proposed Project requiring the OEB attention. Pollution Probe does not believe that any of these issues would specifically prohibit the OEB from granting Hydro One Leave to Construct approval in this proceeding, but should inform the OEB's decision, conditions of approval and provide clarity for OEB expectations in similar future proceedings. Where gaps and issues are not specifically recognized by the OEB, it can result in systemic barriers prohibiting advancement of policy enhancements that the OEB and Province have been striving to achieve (for example more efficient and cost-effective integrated energy planning and solutions for Ontario consumers and communities, increased distributed energy resources, etc.).

Pollution Probe has provided submissions below on each issue identified in the Issues List for this proceeding.

Issue 1: Project Costs

Hydro One provides a summary of the information and material used to develop the cost estimate for the Project in its Argument in Chief³. Cost and impacts related to the proposed Project are also directly related to the potential environmental and socio-economic impacts that are assessed in the draft Environmental Study Report. A copy of the environmental assessment was not filed with the application, but a link was provided in response to interrogatories.

Pollution Probe agrees that this proceeding is not intended to review and approve the draft Environmental Study Report, but that document contains critical information required for this proceeding that was not file in the application. Hydro One did not translate the information from the draft Environmental Study Report into specific mitigation measures or related cost estimates. Hydro One also confirmed that its cost estimate is not based on detailed estimation techniques, but includes some blanket assumptions for elements like environmental mitigation and restoration based on estimates from selected contractors⁴. The bids received are only valid based on information provided during the bid process and any missing or modified information will

³ HONI_ARGChief_20220928

⁴ EB-2022-0140 Exhibit I, Tab 6, Schedule 12

result in changes once the Project design, landowner agreements, mitigation measures and permits are completed.

Based on the evidence provided in this proceeding, it is not possible to validate that the mitigation costs are reasonable or in alignment with the environmental and socio-economic mitigation measures recommended in the Draft Environmental Report. Approval of the project as requested could be interpreted that the OEB supports the draft mitigation proposed and related cost estimate. If the project is approved, the OEB could include a condition of approval (often used in Leave to Construct projects) that Hydro One must adhere to the environmental and socio-economic mitigation recommendations included in the project Environmental Study Report. Additional comments related to costs estimates are also included in sections below given that they related to several issues on the Issues List.

1.1. Has the applicant provided sufficient information to demonstrate that the estimates of the project cost are reasonable? Are comparable projects selected by the applicant (as required by the filing requirements) sufficient and appropriate proxies for the proposed project?

The applicant has used project comparisons and information from selected contractors⁵ to validate elements of its cost estimate. Bid estimates are valid based on information provided during the bid process and any missing or modified information will result in changes. Costs will vary from the cost estimate once all approvals have been obtained.

The comparable projects listed by Hydro One do not appear suitable as a comparison for this Project given that those project estimates/costs were created prior to the current inflationary environment. One of the examples provided by Hydro One dates back as far as 2012⁶. If Hydro One needs to bid the final project once final design and approvals are completed, the costs may be higher than those previously received, unless inflationary pressures ease.

A challenge to the OEB in this proceeding related to costs is that if the project is approved based on the cost estimate provided in the application and the actual Project costs are significant higher, the cost will have already occurred and there will be a high likelihood that rate payers will need to pay for those costs unless the OEB disallows any cost overage. The OEB has the ability to limit rate payer impacts by limiting recovery of costs to those outlined in this application, placing the responsibility to cover any overspending on Hydro One for the project. Given the high likelihood that project costs will exceed the estimates provided by Hydro One in this application, consideration on how to limit rate payer impacts due to Project overspending are worth consideration.

⁵ B/7/1 pages 3 lines 5-6.

⁶ B/7/1 page 5, table 3.

1.2. Has the applicant adequately identified and described any risks associated with the proposed project? Is the proposed contingency budget appropriate and consistent with these identified risks?

The cost estimate and in particular the contingency budget does not appear appropriate when considering the risks and information available. This essentially results in the same issues identified above in 1.1.

Hydro One has identified three main risks related to its cost estimate.

- Land Acquisition – Risk of owners refusing Hydro One voluntary agreements leading to the necessity of expropriation.
- Subsurface Conditions – Unforeseen subsurface or environmental conditions may require additional mitigations or delay or stop construction progress
- Approvals and Permits

Hydro One recently identified inflationary cost increases (capital and O&M) in its 2024-2027 Rates proceeding⁷. This ultimately led the proceeding to be put into abeyance while Hydro One updated its application with significant costs increases beyond its initial application. It seems counter-intuitive that Hydro One expects significant increases to capital costs across its portfolio from 2024-2027, but that those same factors would not also impact costs related to this Project. Those same risks relate to this Project and do not appear to be appropriately accounted for by Hydro One for this Project.

Additionally, Hydro One indicates that its estimates were based upon a Class 3 cost estimate (as per the AACE International Estimate Classification System) which means the accuracy of the estimate is in the range of -20%/+30%⁸. The Project contingencies accounted for by Hydro One are 8.9%⁹ and 4.6%¹⁰ for Line costs and Station costs, respectively. Given that the cost estimate is based on a Class 3 estimate, the upper bound is significantly (21% to 25.4% or approximately \$57.6M¹¹) higher than the contingency costs put before the OEB in the application. This creates significant risk that the project costs will be higher than those identified in the application.

Hydro One is also planning for an additional application related to expropriation of lands required for the Project¹². The Project cost estimate does not include Project costs that would occur should that additional proceeding occur. Pollution Probe supports progressing successful landowner negotiations and agreements via this proceeding, rather than leaving those issues for an additional expropriation proceeding.

⁷ EB-2021-0110

⁸ HONI_ARGChief_20220928. Paragraph 17.

⁹ B/7/1 Table 1 Line Cost contingencies are \$20.9M out of \$235.27M, or approximately 8.9%.

¹⁰ B/7/1 Table 2 Station contingencies are \$1.5M out of \$32.4M, or approximately 4.6%

¹¹ $(21\% \times \$235.27) + (25.4\% \times \$32.4M) = \$57.6M$

¹² Expropriation is noted as one of the three main risks related to the cost estimate and the project schedule includes an expropriation proceeding. Hydro One confirmed it will request an expropriation proceeding if agreement with landowners is not reached (ref: Exhibit I, Tab 6, Schedule 7).

1.3. If the applicant has requested that deferral accounts be established, has the applicant adequately demonstrated that the eligibility criteria of Causation, Materiality, and Prudence have been met?

Hydro One's application does not include a request for additional deferral accounts. However, it is important to note that costs related to the Project approvals sought in this proceeding directly relate to a deferral account recently created. Hydro One indicated that line costs of the Project will be recorded and tracked in Hydro One's Affiliate Transmission Partnerships regulatory account, which was approved by the OEB in EB 2021-0169.

Issue 2: Prices: Customer Impacts

2.1. Has the applicant correctly determined the need for and the amount of any capital contributions that are required for the project?

Hydro One indicates that no customer capital contributions are required for the Project. There are no specific customers identified in the evidence provided by Hydro One that would appear to require a customer contribution. However, it has been identified that there is significant increased electricity generation planned¹³ in the area that will be served by the proposed Project. It is unclear how the increased local generation would offset the demand needs identified in the application and/or if the Project would then be leveraged by the generating station for exporting additional gas fired generation to the Ontario grid.

2.2. Are the projected transmission rate impacts that will result from the project reasonable given the need(s) it satisfies and the benefit(s) it provides?

It is important to note that actual rate impacts will depend on the total Project costs that the OEB allows Hydro One to put into rates. As noted above (Issues 1) the Project costs and related rate impacts (if cost overages are allowed into rates by the OEB) will likely be significantly higher than outlined in this application.

It is also important to note that the OEB is currently reviewing the Ontario Uniform Transmission Rates¹⁴ and it is expected that those rates will be updated and possibly reduced prior to 2025. Revenues estimated in the application may be different in 2025 and beyond.

Issue 3: Reliability and Quality of Electricity Service

3.1. Has the applicant established that the project will maintain or improve reliability?

No, the applicant has not established that the project will maintain or improve reliability.

Hydro One states that it believes that the project will not impact system reliability, but was not able to provide sufficient evidence to support that belief. Furthermore, Hydro

¹³ EB-2022-0157 Exhibit B, Tab 1, Schedule 1, Page 16.

¹⁴ EB-2021-0243.

One confirmed that is not currently tracking any metrics and does not plan to track any metrics that would enable the OEB, IESO or other parties to validate if the Project maintained, improved or decreased reliability¹⁵.

3.2. Has the applicant provided a final System Impact Assessment (SIA)? Does the final SIA conclude that the project will not have a material adverse impact on the reliability of the integrated power system?

Hydro One provided a final SIA which indicated that Hydro One expects no material adverse impact to the grid.

Issue 4: Route Map and Form of Landowner Agreements

4.1. Are any proposed forms of landowner agreements under section 97 of the OEB Act appropriate and consistent with OEB requirements?

It appears that the form of landowner agreements put forward in this application is not aligned with landowner expectations and if approved by the OEB will result in an expropriation proceeding. The OEB has typically encouraged applicants to work proactively with landowners to close the gaps and specific expectations by the OEB has resulted in full settlements in other recent proceedings¹⁶. Pollution Probe encourages the OEB to consider options or requirements for the applicant to resolve outstanding issues in favour of avoiding an additional expropriation proceeding.

Pollution Probe does not agree with Hydro One's suggestion that issues related to the Project route falls outside the scope of this proceeding. Routing and final Project design directly relates to costs and system impacts (e.g. reliability) of the proposed Project. Although the general need for the Project was excluded from the Issues List, it does not exclude routing issues from consideration.

4.2. Does the route map provided pursuant to section 94 of the OEB Act show the general location of the proposed project and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed project is to pass.

Hydro One provided a "General Area Map" in Exhibit B, Tab 2, Schedule 1 which depicts at a high level the proposed route relative to existing transmission highway and railway infrastructure. This map was not sufficient to provide the level of detail that should have been provided in the application, including details on water courses and other significant features. As a result of discovery during the interrogatory process, Hydro One provided a website link to Hydro One's draft Environmental Study Report, which contains more detailed maps depicting navigable waters and other environmental constraints and features impacted by the proposed Project. Hydro One indicates that "taken as a whole, all of these maps adequately meet the Board's requirements of ensuring mapping information regarding

¹⁵ EB-2022-0140 Exhibit I, Tab 6, Schedule 9 b/c and Exhibit I, Tab 6, Schedule 1b.

¹⁶ EB-2022-0086 – OEB direction resulted in the applicant and landowners to accelerate negotiations resulting on a negotiated settlement.

the Project has been adequately presented and available to the public for its review and consideration”¹⁷. Pollution Probe agrees that collectively, the maps in the application and draft Environmental Study Report meet the OEB’s requirements. Pollution Probe suggests that the draft Environmental Study Report and related maps should be filed with the original application and recommends that the OEB clarify this for future consideration by Hydro One.

Issue 5: Conditions of Approval

5.1. The OEB’s standard conditions of approval are attached as Attachment 1. If the OEB approves the proposed project, what additional or revised conditions, if any, are appropriate?

Pollution Probe has no proposed changes to the OEB standard conditions, but instead recommends that the OEB address the issues identified above in its decision.

¹⁷ HONI_ARGChief_20220928. Paragraph 54.